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PATENT TRADEMARK OFFICE

Docket No: 1789 OF 908

7-11-02
#9/BNE
JUL 11 2002
TO 3700 MAIL ROOM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Michael Delk; Augustus Felix

Serial No.: 09/481,120

Art Unit: 3763

Confirmation No.: 5209

Filed: January 11, 2000

Examiner: Sirmons, K.

For: ELECTRICALLY POWERED SURGICAL IRRIGATOR

RESPONSE TO FINAL REJECTION

Hon. Commissioner of
Patents and Trademarks
Washington, DC 20231

July 2, 2002

Sir:

In the Office Action dated May 31, 2002, claims 12 and 13, the only claims remaining in this application, were finally rejected under 35 U.S.C. 103(a) as being unpatentable over Saravia et al. in view of Jepson et al. This rejection cannot possibly be a proper rejection for the reasons explained below; accordingly,

reconsideration is respectfully requested.

Putting aside the fact that Jepson does not disclose the application of a lubricant to a spike (as opposed to the manufacture of a blunt cannula from a plastic material which may include silicone or other lubricants), applicant will concede for the sake of argument that the prior art teaches the idea of a low friction spike to penetrate the septum of a medical device (in fact, Jepson's blunt cannula is not intended to pierce a membrane; rather, it is intended to be inserted into a pre-slit injection site). Nevertheless, the Examiner's proposed combination is directly contrary to the teaching of Saravia et. al. and therefore cannot possibly be permissible.

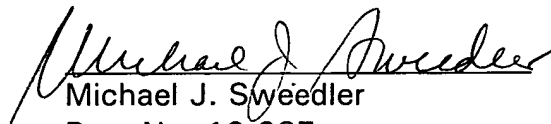
One of the novel features of Saravia et al. is that the entire pumping unit 11 with the hose 23 and the cable 27 can be supported from the liquid supply container by connecting the hollow spike 12 to the container fitting 13. In fact, claim 14 of Saravia et al. specifically recites a "a generally tubular spike having means for...(4) independently supporting said pumping unit from an irrigation liquid supply container..."

Thus, in Saravia et al., it is not only desirable it is mandatory that the frictional force between the spike and the fitting of the irrigation tube be high; otherwise, the spike will not be able to support the weight of the pump unit. Hence, the Examiner's suggestion that it would be obvious to lubricate the spike is legally incorrect since it would destroy the intended function of Saravia's spike.

It is respectfully submitted that the Examiner is confusing simplicity with obviousness. Applicant concedes that the invention in this case is simple. But that does not mean it is obvious. Certainly, lubricating the spike cannot be obvious in light of Saravia et al. in which a high friction spike is necessary. Reducing the friction fit between the spike and fitting in Saravia et al. would defeat a principle feature of the invention, i.e., use of the spike to support the weight of the pumping unit.

Considering further that the secondary reference (Jepson) does not disclose the application of a lubricating coating to the spike, nor does the patent relate to a spike which is intended to penetrate a continuous septum, applicant respectfully submits that the rejection is clearly improper. Accordingly, the Examiner is respectfully requested to withdraw the final rejection and to pass this application to issue.

Respectfully submitted,


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